No. 2336

United States

Circuit Court of Appeals

For the Ninth Circuit.

WHITLA & NELSON, a Copartnership, Attorneys for the LANE LUMBER COMPANY, a Corporation, Bankrupt,

Petitioner,

vs.

SAMUEL BOYD, Trustee in Bankruptcy of the LANE LUMBER COMPANY, a Corporation, Bankrupt, and L. C. WILSON, Receiver of the STATE BANK OF COMMERCE OF WALLACE, IDAHO,

Respondents.

In the Matter of the LANE LUMBER COMPANY, a Corporation, Bankrupt.

Petition for Revision
and
Transcript of Record in Support Thereof

Under Section 24b of the Bankruptcy Act of Congress, Approved July 1, 1898, to Revise, in Matter of Law, a Certain Order of the United States District Court for the District of Idaho, Northern Division.

FILMER BROS. CO. PRINT, 330 JACKSON ST., S. F., CAL.

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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In the United States Circuit Court of Appeals, Ninth Circuit.

In the Matter of the LANE LUMBER COMPANY, A Corporation,

Involuntary Bankrupt.

Petition for Review.

To the Honorable, the Judges of the Circuit Court of Appeals, Ninth Circuit, of the United States:

Your petitioners, Whitla & Nelson, a copartnership, attorneys for the Lane Lumber Company, a corporation, bankrupt, respectfully show:

On the 29th day of July, 1911, the above-named Lane Lumber Company, a corporation, was duly adjudged an involuntary bankrupt by the United States District Court for the District of Idaho, Northern Division.

P. H. Wall, the president of the bankrupt corporation, came to the office of Whitla & Nelson and made arrangements with the firm to represent the corporation in the bankruptcy proceedings and to prepare the schedules for the corporation, and do all acts necessary to properly represent said corporation through the proceedings.

The officers of the corporation had no means to pay the attorneys, and it was agreed between the officers of the corporation and petitioners, that petitioners were to be paid whatever amount the Court allowed them as attorneys for bankrupt; that the entire matter was to be submitted to the Court and it

was to make the allowance for the services so performed. No other payment was made for the services to said attorneys.

At the time said employment was made of the firm of Whitla & Nelson to represent the bankrupt, the bankrupt had been out of the possession of its books for several months; the corporation having been in the hands of a receiver, L. F. Connolly, who had been appointed several months previous to the adjudication of the Lane Lumber Company as bankrupt by the Honorable W. W. Woods, Judge of the District Court of the Second Judicial District of the State of Idaho. The officers of the bankrupt corporation did not know the exact status of the affairs of the corporation or in regard to the claims that were secured and unsecured and what was to go into the schedules, and it was necessary to have the books of the corporation to properly prepare the schedules. The said L. F. Connolly, receiver in the State Court, refused to turn over the books and records of the company to its officers or the attorneys, and it was necessary for said attorneys to make application to the Court for an order directing the receiver to allow them the possession of the books for the purpose of preparing the schedules. The Court granted the order for said books and they were finally obtained.

In preparing the schedules it was necessary for petitioners to examine carefully the books of said company, and about three weeks of time was consumed by the firm and its office force in preparing said schedules. In the preparation of said schedules it was necessary for Mr. Whitla, one member of said firm, to go to Spokane to interview some of the cred-

itors to find out the exact condition of their claims. The schedules covered something like one hundred pages of typewritten matter, a great part of which was description of different sections of land, and for the three weeks spent thereon and for stenographer's charges thereon, a charge of $750.00 was made the bankrupt.

A charge of $50 per day was made for the time actually spent in court and this fee includes the time spent in the office in going over matters with the bankrupt's officers, in conferring with the trustee for bankrupt, and in looking up authorities and preparing for the court work, and advising the officers of the corporation. Considerable time was spent by the firm in preparing papers, looking up authorities and securing facts to assist the court, but no charge was made for this during the first meeting of creditors. The charge of $50.00 a day was for the full thirty-seven days in attendance by petitioners in court upon the specific orders of the referee in bankruptcy to attend such meetings.

A charge of $100.00 was made for preparing proceedings, including objections and brief on objection in reference to contesting the claim of the receiver appointed by the State Court for allowance of fees and expenses to himself and attorneys.

The claim was filed by L. F. Connolly, receiver in the State Court. As receiver in the State Court he had filed a claim in the bankruptcy court for a large amount of expense, including attorney's fees, which were deemed improper on behalf of the bankrupt. Attorneys for the bankrupt, claimants herein, objected to said claim and filed their objections in writ-

ing and also made objection in open court which were concurred in by others, including Mr. Russell of Post, Avery & Higgins and the trustee. The trustee, however, did not care to urge his objections or prepare a brief and the attorneys for bankrupt, claimants herein, prepared a brief and submitted argument to the Court in the matter. The Court sustained the objections to the claim of the receiver and there was something like $1100.00 or $1200.00 asked for by the receiver of the State court disallowed. A charge of $100.00 was made bankrupt for this work, about two days being spent by claimants in getting out the brief besides the time spent in arguing same.

One charge of $25.00 and another charge of $15.00 was made by the attorneys for bankrupt for matters connected with getting the order from the Court on L. F. Connolly, receiver in the State court, for the books of bankrupt. The services were rendered prior to the time the schedules were filed and were in regard to securing possession of the books.

The receiver in the State court at about this time also attempted to have the proceedings in the bankruptcy court stopped and the officers of bankrupt consulted with claimants in regard to this matter on several occasions. Officers of bankrupt consulted with claimants on numerous occasions and took up a great deal of their time but no further charges were ever made in regard to the advice given bankrupt's officers.

That the said first meeting of creditors continued up to the month of November, 1912. The Honorable L. L. Lewis, Referee in Bankruptcy, before

whom these proceedings were had, ordered and requested claimants, Whitla & Nelson, to attend all the hearings of said first meeting of creditors and it was upon the specific request and order of said referee that the attorneys for bankrupt, petitioners herein, attended said meetings of creditors. Petitioners at all times sought to have said first meeting of creditors end as soon as possible that they might not be compelled to make any further charges for attendance thereon, and did nothing to cause the said meeting to be continued as long as it was, and did all in their power to assist the proceedings therein. A copy of the referee's appearance docket, showing dates on which hearings were had, is hereunto attached and marked Exhibit "A–0."

That on the 11th day of December, 1912, petitioners filed a petition with the referee in bankruptcy praying for the allowance of attorney's fees to them as attorneys for said bankrupt, attached to which petition was an itemized account of their charges. Said petition and schedules are hereto attached and marked Exhibit "A." That objection to the allowance of said attorney fees to said claimants were filed by the Bank of California and Price Waterhouse and Co. (Exhibit "B"), and L. C. Wilson, receiver of the State Bank of Commerce, Wallace, Idaho (Exhibit "C"), and Samuel Boyd, Trustee (Exhibit "D"). That on the 26th day of March, 1913, said petition came regularly on for hearing before the referee in bankruptcy pursuant to an order made thereon on the 10th day of March, 1913, at which time said hearing was continued until the 9th day of April, 1913. (Said order setting the petition of claimants down

for hearing is hereto attached marked Exhibit "E").

That on the 9th day of April, 1913, said petition came regularly on to be heard, the objections all and singular to the same were overruled and petitioners directed to proceed with their proof. Whereupon, said petition and the objections thereto, the itemized fee bill attached to said petition and the proof submitted by claimants, Whitla & Nelson, were fully heard and considered by the referee in bankruptcy, and taken under advisement. (A copy of all the testimony heard at said hearing is hereto attached and marked Exhibit "F.") That on said hearing proof was submitted by claimants of attorneys of general practice on the reasonableness of their charges and proof was submitted as to the work done. None of the parties objecting to the allowance of said attorney's fees to bankrupt's attorneys appeared at said hearing, although due notice was given all creditors of said hearing and no objections were made as to the reasonableness of the charges for the services rendered.

On May 19th, 1913, the referee in bankruptcy made and filed in said matter an order allowing claimant the sum of $2750.00 as attorney's fees for the services rendered bankrupt. A copy of said findings and order are hereto attached and marked Exhibit "G." Thereafter a petition to review was filed by L. C. Wilson, receiver of the State Bank of Commerce of Wallace, Idaho, and E. N. LaVeine, attorney for the trustee, a copy of said petition is hereto attached and marked Exhibit "H." The petition to review, together with all necessary matters was reported to the District Judge by the referee, a copy of which report

is hereto attached and marked Exhibit "I." The said petition to review came regularly on for hearing before the Honorable Frank S. Dietrich, Judge of the above-entitled District Court, at which time said matter was duly heard and considered and arguments made by the attorneys for said petitioners and respondents therein and the matter was thereupon taken under advisement by said Judge.

That thereafter and on the 7th day of July, 1913, said Judge rendered his decision revising the order of the referee in bankruptcy allowing claimants the sum of $2750.00, and ordered that claimants be allowed only the sum of $385.00, the same to be paid in due course of administration if there were sufficient funds available therefor, otherwise the claim was to share ratably with others of like dignity. (A copy of said decision is hereto attached and marked Exhibit "J.")

That said decision is erroneous:

1st. Because the petitioners' objecting to the allowance of said attorney fees by the referee in bankruptcy did not appear at the time said matter was set for hearing, and thereby waived their objections to said claim, and took no exception to the allowance of said claim of $2750.

2d. Because the said sum of $385.00 is inadequate and insufficient for the services rendered by petitioners herein.

3d. Because the following charges, which were disallowed by said District Judge, were proper charges and duly proved, to wit: August 4, 1911, advice relating to bankruptcy, proceedings instituted against Bankrupt, $25; August 7, 1911, advice and

services relative to bankruptcy proceedings, $15; and said decision is erroneous in holding that the evidence relating to said charges was too vague and uncertain to serve as a basis for a conclusion that they were reasonably necessary to enable the bankrupt to perform its duties or a fair value thereof.

4th. Because the charge of $100 of August 24, 1911, for preparing papers, including objections and brief on objections and contesting receiver's claim for allowance of fees and expenses to himself and attorneys, was disallowed, and said decision is erroneous in holding that there was no legal obligation on the part of bankrupt or its attorneys to contest said allowance of receiver's claim and in holding that it was the trustee's function and his duty and also the rights of the creditors to oppose baseless claims, including said claim put forth by the receiver, and in holding that said charge of $100 was an unnecessary charge against said estate.

5th. In holding that $35 was a sufficient charge of the stenographer's services in preparing said schedule, and that $15 per day was a sufficient charge for claimants to gather and classify the data from which said schedules were prepared, and that a retainer fee of $100 for the legal advice incidental to the supervision of the work was sufficient.

6th. Because the sum of $100 for attending the first meeting of creditors, to wit, thirty-seven days actual time in court between August, 1911, and November, 1912, is not a reasonable allowance for the services rendered, and for the reason that said amount of $1850.00, or $50.00 per day for the actual court attendance, is a reasonable and just charge for

the services rendered.

7th. Because said decision of said District Judge in allowing said claimants only the sum of $385.00 is without foundation or reason, and there is no evidence upon which a disallowance or reduction of the sum of $2,750 could be made or predicated.

8th. That said decision is unreasonable, unjust and against public policy for the reason that said decision is not supported by any sound reasoning or evidence.

WHEREFORE, petitioners, feeling aggrieved by said decision, pray that the same may be revised as to matters of law and that said claim of your petitioners herein for the sum of $2,750 as attorney fees for services rendered bankrupt, be allowed.

Your petitioners designate E. N. LaVeine, attorney for the trustee, residence and postoffice address, Coeur de'Alene, Idaho, and James A. Wayne, attorney for the Receiver of the State Bank of Commerce, residence and postoffice address, Wallace, Idaho, as the persons upon whom your petitioners desire notice to be served.

Respectfully submitted,

WHITLA & NELSON,

Petitioners herein.

State of Idaho,
County of Kootenai,—ss.

R. S. Nelson, of lawful age, being first duly sworn, on oath, deposes and says: I am a member of the firm of Whitla & Nelson, the petitioners herein, and make this verification in their behalf. That the matters and things stated in the foregoing petition

are true to the best of my knowledge, information and belief.

R. S. NELSON.

Subscribed and sworn to before me this 2d day of October, A. D. 1913.

[Seal] F. D. WARN,
Notary Public.

In the United States Circuit Court of Appeals, Ninth Circuit.

In the Matter of the LANE LUMBER COMPANY, a Corporation,

Involuntary Bankrupt.

Acceptance of Service and Waiver of Notice of Filing Petition for Review.

Service of the within petition for review is hereby accepted, and notice of the filing of the petition for review is hereby waived.

Dated this 30th day of September, A. D. 1913.

E. N. LA VEINE,
Attorney for Samuel Boyd, Trustee of Bankrupt.

J. A. WAYNE,
Attorney for L. C. Wilson, Receiver of State Bank of Commerce.

In the District Court of the United States for the District of Idaho, Northern Division.

IN BANKRUPTCY.

In the Matter of the LANE LUMBER COMPANY, a Corporation,

Bankrupt.

Exhibit "A"—Petition of Whitla & Nelson for Allowance of Attorneys' Fees as Bankrupt's Attorneys.

Your petitioners respectfully state and show to this Honorable Court that heretofore the Lane Lumber Company was duly adjudged bankrupt, and thereafter in accordance with the orders of this court was required to prepare and file schedules herein, and for the purpose of so doing said bankrupt employed your petitioners, who are attorneys at law duly licensed to practice in this court and in all courts of the State of Idaho.

That after the employment of your petitioners as attorneys for the bankrupt, petitioners spent considerable time in advising said bankrupt and its officers relative to said bankruptcy proceedings, to wit, on the 4th day of August, 1911, rendered services and advice to bankrupt for which a charge of $25.00 has been made; that on August 7th, 1911, petitioners rendered services and advice to said bankrupt for which a charge of $15.00 has been made; that on August 12th, 1911, petitioners rendered further services and advice for which a charge of $15.00 has been made. [1*]

That after said Lane Lumber Company was adjudicated bankrupt and an order entered directing said bankrupt to prepare schedules of its assets and liabilities your petitioners began the work of preparing the schedules herein; that at said time Lawrence F. Connolly was receiver of the Lane Lumber Company

*Page-number appearing at foot of page of original certified Record.

appointed under the orders of the State court, but said receiver refused to allow bankrupt to examine its books and in every way possible hindered bankrupt and its officers in securing the necessary data with which to make said report and schedules. Thereafter bankrupt, acting through your petitioners, filed an application in this court and had an order issued directing said Lawrence F. Connolly as receiver to allow bankrupt to examine its books, and after a great deal of delay and annoyance on the part of said Connolly as receiver bankrupt was permitted by an order of this Court to have access to the books of said corporation for the purpose of preparing schedules. That thereafter your petitioners spent a large amount of time, to wit, more than two weeks of the time and services of your petitioners and use of their stenographer for all of said time *the schedules* of the affairs of said bankrupt as required by law; that the affairs of said bankrupt were in badly mixed condition and by reason of the fact that bankrupt had not been in possession of said books since about the month of May, 1911, it was very difficult to prepare said schedules, and the work of arranging the assets and liabilities in accordance with the schedules devolved wholly upon your petitioners and in preparing said schedules bankrupt was greatly handicapped by lack of information as to the exact condition of its affairs thereby causing your petitioners to expend a large amount of additional work in connection therewith; that after preparing said schedules and going over all of the [2] accounts of bankrupt, your petitioners submitted the same to this court on behalf of bankrupt, said schedules covering more

than one hundred pages of typewritten matter and having consumed more than two weeks' time to prepare, for which a charge of preparing said schedules together with the services of making application to this court to compel said Lawrence F. Connolly as receiver to allow bankrupt to examine the books, your petitioners have made a charge of $750.00.

Your petitioners have made a further charge of $50.00 per day for the days which they have attended bankruptcy court on the hearing of the matters in this case. Your petitioners have also made a further charge of $100.00 for preparing the proceedings including objections and brief on the objections and contesting of the receiver's claim for allowance of fees and expenses to himself and attorney herein, and in this regard your petitioners respectfully state and show that upon the said objections being made, the bankrupt's attorneys, on behalf of bankrupt, appeared and urged said objections and more than a half day was spent in the argument of the same; that thereafter bankrupt's attorneys duly prepared, served and filed a brief herein upon said objections and contest of said Receiver's claim, with the result that improper charges amounting to about $1500.00 made by said Receiver were disallowed and bankrupt's estate saved from having to make payment of this amount as a cost of administration, for which services your petitioners have rendered the additional charge of $100.00.

Your petitioners state that the $50.00 a day charge made for attending bankruptcy court one day is made to include the extra time spent by petitioners in briefing the questions involved upon each of said

hearings, going over the matters with bankrupt and investigating the facts relating to the various [3] matters that were to come up for hearing as well as the time spent in looking over the records and papers, so that in addition to the time actually charged for by your petitioners, your petitioners respectfully state that about half as much more time has in reality been spent for said bankrupt as has been charged for herein, but that the charge is made to include the extra services performed by bankrupt's attorneys.

Your petitioners attach hereto as a part of this petition an itemized statement of their charges and allege that the sum charged in each and every item is a reasonable fee therefor, and that the total sum of twenty-seven hundred fifty-five ($2,755.00) dollars is a reasonable sum to be allowed your petitioners as attorneys' fees for the bankrupt herein.

Your petitioners further state and show that when they were employed by said bankrupt it was represented that the business of said bankrupt and assets thereof were of the sum and value of about a half million dollars, and your petitioners were compelled to and did forego other lucrative employment in accepting the matter of the attorneyship for said bankrupt, and had they not acted as attorneys for said bankrupt, they would have received other employment which would have paid them more than the amount charged for in acting as attorneys for bankrupt herein.

Your petitioners further state that the affairs of said bankrupt were in a very badly mixed condition, and that a very large amount of time was necessarily expended by petitioners in looking after the affairs

of said bankrupt and that the charge of fifty dollars per day made for the services of your petitioners is a reasonable charge for such work, and that the whole sum of $2,755.00 charged by your petitioners is a reasonable sum to be allowed bankrupt's [4] attorneys herein.

WHEREFORE, petitioners pray that they be allowed the sum of twenty-seven hundred and fifty-five ($2,755.00) dollars as attorneys' fees for said bankrupt's attorneys in this action, and that said sum be charged as costs of administration herein and the trustee be directed to pay to your petitioners said sum.

WHITLA & NELSON,
Petitioners.

State of Idaho,
County of Kootenai,—ss.

Ezra R. Whitla, being first duly sworn, deposes and says: I am one of the petitioners named in the foregoing petition and make this verification in their behalf. That I have read the foregoing petition and know the contents thereof, and that I believe the facts therein stated to be true.

EZRA R. WHITLA.

Subscribed and sworn to before me this 11 day of December, A. D. 1912.

F. D. WARN,
Notary Public. [5]

[Statement of Attorneys' Charges and Fees.]

THE LANE LUMBER COMPANY, Bankrupt,

to

WHITLA & NELSON, Dr.

1911.		
Aug. 4.	Advice relating to bankruptcy proceedings instituted against bankrupt..... ..... .$	25.00
Aug. 7.	Advice and services relative to bankruptcy proceedings.. ..	15.00
Aug. 12.	Advice and services relative to bankruptcy proceedings.. ...	15.00
	To services, preparing schedules of bankrupt and services in connection therewith, including application to court for orders upon Lawrence F. Connolly, receiver, to compel him to allow bankrupt to examine books.....	750.00
Aug. 26.	Attending meeting of creditors five days, at $50.00 per day...	250.00
Sept. 9.	Attendance in bankruptcy court	50.00
" 27.	" " "	50.00
Oct. 10.	" " "	50.00
Oct. 23.	" " "	50.00
Nov. 13.	" " "	50.00
Dec. 5.	2 days' attendance in bankruptcy court.....	100.00
Dec. 9.	2 days' attendance in bankruptcy court.....	150

1912.

Jan. 3.	Attendance in bankruptcy court	50.00
~~Should be Feb.~~		
Jan. 12.	" " "	50.00
Feb. 20.	" " "	50.00
~~Should be Feb. 24.~~		
" 27.	" " "	50.00
Apr. 10.	" " "	50.00
" 16.	" " "	50.00
	Total fwd.....	$1855.00

[6]

	Fwd.....	$1855.00
Apr. 18.	Attendance in bankruptcy court	50.00
~~Page 888 Record.~~		
May 2.	" " "	50.00
May 10.	" " "	50.00
May 24.	" " "	50.00
June 11–12.	2 days' attendance bankruptcy court.....	100.00
July 15.	Attendance in bankruptcy court	50.00
" 16.	" " "	50.00
" 26.	" " "	50.00
" 27.	" " "	50.00
Aug. 16.	" " "	50.00
Aug. 24.	Preparing proceedings, including objections and brief on objections and contesting receiver's claim for allowance of fees and expenses to himself and attorney fees.....	100.00
Sept. 26.	Attendance in bankruptcy court	50.00

Oct	14–15.	2 days' attendance in bankruptcy court.....	100.00
Oct.	22.	Attendance in bankruptcy court	50.00
Nov.	25.	Attendance in bankruptcy court	50.00
		Total.....	$2755.00

Besides the total attendance in court in the above matters, a large amount of time was spent in briefing up the various matters set for hearing, going over accounts, records, etc., with bankrupt's officers and generally looking after bankrupt's interests in these proceedings, so that the time actually spent in looking after bankrupt's business in the above estate was about fifty per cent more than shown above.

Filed June 5, 1913. A. L. Richardson, Clerk. [7]

[Exhibit "B"—Objections of Bank of California et al. to Allowance of Attorneys' Fees.]

In the District Court of the United States for the District of Idaho, Northern Division.

IN BANKRUPTCY.

In the Matter of the LANE LUMBER COMPANY, Limited, a Corporation, Bankrupt.

Comes now the Bank of California and Price Waterhouse & Company, creditors of the above-named bankrupt, in the above-entitled proceeding by their attorneys and Post, Avery & Higgins, a creditor of the above-named bankrupt in said proceedings and object to the allowance of attorneys' fees for Whitla & Nelson, as attorneys for the bankrupt in the above-entitled matter, or any attorneys' fees to Whitla &

Nelson, as attorneys for the bankrupt, on the grounds and for the reasons that the fees claimed by said Whitla & Nelson, as attorneys for the bankrupt in the above-entitled proceeding, are excessive, exorbitant and unreasonable.

The undersigned creditors hereby join in the objections of L. C. Wilson, Receiver of the State Bank of Commerce of Wallace, Idaho, a creditor of the above-named bankrupt, to the allowance of such fees, which objections have heretofore been filed herein, and adopt said objections as a part of the objections of the undersigned to the allowance of attorneys' fees for the attorneys for the bankrupt as fully and to all intents and purposes as if said objections were herein again particularly set forth.

WHEREFORE, the undersigned creditors ask that the prayer of the petition of Whitla & Nelson, to be allowed attorneys' [8] fees as attorneys for the bankrupt in the above-entitled proceeding, be not granted, and that no attorneys' fees be allowed said attorneys as attorneys for the bankrupt in the above entitled proceeding.

BANK OF CALIFORNIA.
By POST, AVERY & HIGGINS,
Its Attorneys.
PRICE WATERHOUSE & COMPANY.
By POST, AVERY & HIGGINS,
Its Attorneys.
POST, AVERY & HIGGINS.

Filed June 5, 1913. A. L. Richardson, Clerk. [9]

In the District Court of the United States for the District of Idaho, Northern Division.

In the Matter of the Estate of LANE LUMBER COMPANY, Limited, a Corporation, Bankrupt.

Exhibit "C"—Objections of L. C. Wilson to the Claim of Whitla & Nelson.

Comes now L. C. Wilson, Receiver of the State Bank of Commerce of Wallace, Idaho, and objects and protests against the allowance of the claim of Whitla & Nelson filed herein on the 11th day of December, 1912, or any part thereof for the following reasons and upon the following grounds, to wit:

I.

That said claim is exorbitant.

II.

That many of the items in said claim are not proper charges against the estate of the bankrupt.

III.

That it is disclosed by the records in this case that the services pretended to have been performed as attorneys for said bankrupt and now sought to be made a charge against said estate, were in fact performed in attempting to conceal from the trustee in bankruptcy matters in connection with said estate and to hinder and delay the creditors of said bankrupt in subjecting the assets of the said bankrupt to the satisfaction of their claims.

IV.

That the first three items set forth in the itemized

account attached to said claim are not proper charges against the estate of the bankrupt, and said statement does not disclose upon what [10] matters said advice was given to said bankrupt.

V.

That the item of $750 for preparing schedules of the said bankrupt is not a proper charge against the estate of said bankrupt and is in fact a fee pretended to be charged for performing services which could have been and should have been performed by the bankrupt himself without compensation, and further that the said item is exorbitant.

VI.

That the several charges in said itemized statement of $50 per day for attending meetings of the creditors is exorbitant, and that none of said items are proper charges against this estate; that said services were not necessarily rendered in the interest of said bankrupt estate or in the interest of said bankrupt.

Dated at Coeur d'Alene, Idaho, this 5th day of April, A. D. 1913.

L. C. WILSON,

Receiver of the State Bank of Commerce of Wallace, Idaho.

JAMES A. WAYNE,

Attorney for Said Receiver, Residence and P. O. Address, Wallace, Idaho.

Filed June 5, 1913. A. L. Richardson, Clerk. [11]

In the District Court of the United States for the District of Idaho, Northern Division.

In the Matter of the LANE LUMBER COMPANY, LIMITED, a Corporation,
Involuntary Bankrupt.

Exhibit "E"—Order Fixing General Hearing.

WHEREAS, a number of petitions have heretofore been filed in the above-entitled cause; and it appearing to the Court that said petitions, and each of them should be speedily heard and that a general hearing in said cause is advisable:

IT IS THEREFORE ORDERED that a hearing be, and the same is, hereby fixed for Wednesday, the 26th day of March, A. D. 1913, at ten o'clock in the forenoon of said day, at the Law Offices of the undersigned Referee in Bankruptcy, located in the Otterson Block in the city of Coeur d'Alene, Idaho, in said District; at which said hearing the following matters will be called and considered, to wit:

Petition of H. C. Taylor; petition of appraisers for allowance of fees; petition relative to interest on insurance matters; petition of Exchange National Bank of Coeur d'Alene; petition of attorneys for bankrupt for the taxation and allowance of attorneys' fees; petition of attorneys for petitioning creditors for the taxation and allowance of attorneys' fees; motion and proposed amended and supplemental proof of claim of the Northern Trust Company et al., for the allowance of attorneys' fees, together with all objections that may be filed re-

lative to the foregoing or any of them. And in addition to the foregoing, the following matters will be submitted to creditors for their consideration, to wit: **[12]**

Priority of payment of accounts and bills allowed in receivership report; payment of accounts and bills contracted by trustee; the consideration of the best means to handle sale of standing timber and cut-over lands; and, such other or further matters as may properly come on to be heard at said time.

AND IT IS FURTHER ORDERED that at least ten days' notice by mail be given, forthwith, to all creditors, counsel and other persons in interest of the time and place of said hearing, according to law.

Done at Coeur d'Alene, Idaho, in said District, this 10th day of March, A. D. 1913.

LAWRENCE L. LEWIS,
Referee in Bankruptcy.

Filed June 5, 1913. A. L. Richardson, Clerk. **[13]**

In the District Court of the United States for the District of Idaho, Northern Division.

IN BANKRUPTCY.

In the Matter of the LANE LUMBER COMPANY, a Corporation,

Involuntary Bankrupt,

Exhibit "F"—Hearing Before Referee in Bankruptcy.

At the city of Coeur d'Alene, county of Kootenai and State of Idaho, in said District, before Lawrence

L. Lewis, Referee in Bankruptcy, on the 9th day of April, A. D. 1913, at 10 o'clock A. M.

This cause came regularly on for hearing pursuant to an order made and entered herein on the 26th day of March, 1913, for the purpose of considering the question relative to the attorneys' fees and no other purpose, and the parties in interest having due notice, bankrupt appearing by its attorneys Whitla & Nelson, petitioning creditors appearing by its attorneys Reed & Boughton, Carnegie Trust Co., appearing by Ernest E. Sargent, and no other or further appearances being made, the following proceedings were had, to wit:

The COURT.—The matter of attorneys' fees or petition relative to attorneys' fees in the case of Northern Trust Co. will be decided upon the briefs and upon the pleadings as it involves only questions of law.

The first objection submitted relative to the allowance of attorneys' fees with reference to Reed & Boughton, attorneys for petitioning creditors, is hereby sustained and all other and further objections are overruled, without prejudice however to Reed & Boughton attorneys for petitioning creditors, and leave is hereby granted to file **[14]** an itemized fee bill which shall be considered as supplemental to their affidavits and petitions now on file in this court. The time granted in which to file said fee bill is limited to and including the 14th day of April, 1913.

The objections all and singular filed herein to the petition of Whitla & Nelson for attorneys' fees

(Testimony of Lawrence M. Larson.)

for attorneys for bankrupt are hereby overruled and said petitioners directed to proceed with their proof:

Mr. Whitla, we shall now proceed to the consideration of your petition.

[Testimony of Lawrence M. Larson.]

LAWRENCE M. LARSON was called as a witness and being duly sworn on examination testified as follows:

(Examination by Mr. WHITLA.)

Q. Mr. Larson, you are the official stenographer of this bankruptcy court, are you?

A. Yes, sir.

Q. Mr. Larson, you have seen the schedules filed in this action by the bankrupt, comprising about 100 pages of typewritten matter, have you?

A. I have.

Q. From your experience as a stenographer, Mr. Larson, I ask you to look at that schedule, taking into consideration the fact it contains a large number of pages of description of real estate and tabulated figures, and state to the Court whether a reasonable stenographer's fee for getting out that schedule would be about $100.00.

A. In answer to that I would say that the average amount received for ordinary matter, testimony in cases and that is sixty cents a page, and this schedule having **[15]** quite a lot of descriptions of property and tabulated work, is very much harder and slower work than ordinary typewritten matter and is worth more, I should say that $75.00 to $100.00 would be what I consider a reasonable pay for get-

(Testimony of Lawrence M. Larson.)
ting out that work.

Q. And work like is in this schedule comprising a large amount of single space work and descriptive work, descriptive work of that kind and compilation of figures is very much harder to do and is very much slower work and worth considerable more a page is it not Mr. Larson?

A. Yes, it is a good deal harder, it is good deal more difficult work than ordinary reporting.

Q. In your estimation from that schedule, what would you say Mr. Larson would be a reasonable fee for getting out the original schedule with the copies required for bankruptcy court?

A. Well, if I was getting that out and charged at the rate I have been getting I wouldn't get that out for less than $75.00 to $100.00.

Witness excused.

[Testimony of Ezra R. Whitla.]

EZRA R. WHITLA, being duly sworn, on examination testified as follows:
(Examination by Mr. NELSON.)

Mr. WHITLA.—My name is Ezra R. Whitla, occupation attorney, have been practicing in the State of Idaho about ten years and have practiced in Federal courts of this State as well as all the State courts.

Q. You have had considerable practice in the bankruptcy court, have you?

A. Yes, I have had considerable experience in bankruptcy matters. I think Mr. Lewis will take judicial [16] notice of that.

Q. The arrangements made with the bankrupt and

(Testimony of Ezra R. Whitla.)

with the firm of Whitla and Nelson were made by you were they? A. They were.

Q. What arrangement in regard to fees was made with the bankrupt when they first came to the firm of Whitla and Nelson?

A. Bankrupt at that time had no money at all, and in fact the corporation itself was in the hands of a receiver and the officers of the bankrupt were not in charge of it, they had no money with which to pay attorneys, and the arrangements were that whatever the Court allowed the bankrupt's attorneys in the matter was to be taken by us as our fee in that matter, the whole matter was to be submitted to the Court for the services so performed and the Court was to make an allowance, whatever it deemed reasonable for our services performed for bankrupt in this case.

Q. State whether or not the firm of Whitla & Nelson have been paid anything by the bankrupt for any service rendered in this case.

A. Have not been paid any sum whatever.

Q. State to the Court in a general way what work was necessary to be done in preparing the schedule.

A. In preparing the schedule, bankrupt had been out of the possession for the books for several months and the books had been gone over by the receiver in the State Court, and they were in very bad condition to get the exact state of facts out of; bankrupt's officers themselves didn't know the exact state of facts, and it was to find out from them from the books what claims were secured and [17] what was to go in

(Testimony of Ezra R. Whitla.)

one schedule and what was not. It was a difficult job and took us several weeks going over the schedules to get the schedules out, and prior to that time Connolly, as receiver of the State court, refused to give us the books and records so that we could find out the facts, and it became necessary for us to do that to make an application to the Court for an order directing Connolly to allow us possession of the books, and Court granted it, and it was only by getting an order that we were able to get the books and data to make the schedules, and also prior to the time we began this, Connolly tried to make an agreement with some of the creditors to abrogate the bankruptcy proceedings and have it set aside, and question came up to see what was proper for them to do, whether to join with Connolly or oppose him, and I took more than half a day going over the condition of affairs of the company with its officers, and advised them that under the conditions that existed that I didn't think it was proper for them to join with Connolly in objecting to the bankruptcy proceedings; that under the law they had committed an act of bankruptcy and there was nothing for them to do but let the bankruptcy proceeding take its course.

Q. What charge did you make for preparing the schedules?

A. We made a charge of $750.00, and I think it was for preparing the schedules; it took us something like two or three weeks getting the schedules out. That included, of course, stenographer's work,

(Testimony of Ezra R. Whitla.)

that all being included as a charge in the matter.

Q. During that time state whether or not all of the time of the office and all those connected with the office was [18] given to that.

A. Good part of that time took both members of the firm as well as the stenographer's work on that, and owing to the fact that bankrupt's were in such condition, we were unable to get the necessary data to tell what should go in the schedules. It necessitated the rewriting of a good part of this one and getting out another, and also necessitated us going to see the creditors to find out the conditions of their claim. I made several trips to Spokane to to see Mr. Stephens, relative to the claim of the Carnegie Trust Co., to see whether it was a note made by the Lane Lumber Co. and endorsed by others, or whether it was made by others and endorsed by the Lane Lumber Co. I got that information from Mr. Stephens, and all that information regarding that account, and I went to Post, Avery & Higgins to learn about their account, whether it was secured or not, and did quite a large amount of work.

Q. State whether or not any charge was made for traveling expenses.

A. The $750.00 included all traveling expenses in lump sum.

Q. What charges were made by the firm for each days' attendance in court?

A. We made a charge of $50.00 a day for the time actually expended in court, and that fee included the time spent in the office in going over authorities

(Testimony of Ezra R. Whitla.)

and going over the matters with the bankrupt's officers; in other words, no charge was made at the office for preparing the case and going over the facts in the office, but the charge of $50.00 a day in court, included the time spent in office, and there is a good *deal time* we spent in office preparing papers and looking up authorities and facts, all included in that. **[19]**

Q. I notice one charge of $100 for preparing proceedings, including objections and brief on objections in reference to contesting referee's claims for allowance of fees and expenses to himself and attorneys, a fee of $100.00. State what was done by the firm in that matter and what the result of the objections were.

A. In that matter the receiver had filed a bill for a large amount of expenses, including attorneys' fees which were deemed improper, and on the behalf of bankrupt we objected to that and filed our objections and made our objections in open; objections were concurred in by some others including Mr. Russell of Post, Avery & Higgins and the trustee, who did not care to get out a brief, and we got out a brief and submitted our argument to the Court in that matter, and the Court sustained our objections, and my recollection is that there was something like $1100.00 or $1200.00 asked by the receiver that was disallowed because of our objections and brief filed and we made a charge of $100.00. I spent, together with Mr. Nelson, about two days' work on that brief alone.

Q. Are you acquainted, Mr. Whitla, with what reasonable charges are in such matters as this in vicinity

(Testimony of Ezra R. Whitla.)

in any bankruptcy court, for services such as were rendered by Whitla & Nelson in this matter?

A. I am.

Q. State what the reasonable charges were per day for court work such as rendered by the firm of Whitla & Nelson in this matter.

A. I think the sum of $50.00 a day rendered was a reasonable charge for the services. [20]

Q. What about the $100.00 for preparing that special work?

A. I think that was a reasonable charge for the work. Had I been making that for any other person or in any other court I would have charged that or more. I think that charge for the schedule was also a reasonable charge. In that regard I will say that bankrupt in every instance fully disclosed to the Court and trustee and we done everything possible to assist the trustee and creditors in learning the full information relative to this estate and there was none of these hearings that was delayed because of the bankrupt's officers or bankrupt's attorneys, because in every instance we tried to push the hearings at as early a date as we possibly could.

Q. State whether or not there were a number of conferences held with the trustee and trustee's attorney and the firm of Whitla & Nelson, in regard to assisting the trustee in this regard.

A. There was. Every time the trustee asked us or bankrupt relative to anything, we took it up and furnished him with all the information he desired so far as we were able to do so, and in none of these proceedings was there any charge for work done for

(Testimony of Ezra R. Whitla.)

the benefit of the trustee or the bankrupts personally.

Q. State whether or not you included in any of these charges any work done for P. H. Wall or any other person individually other than connected with the bankruptcy matter.

A. Nothing whatever. This was strictly for preparing the schedules and attending the examinations and assisting the creditors and trustee in this estate. [21]

[Testimony of Robert H. Elder.]

ROBERT H. ELDER, called as a witness, being duly sworn, on examination testified as follows:

(Examination by Mr. WHITLA.)

Q. Mr. Elder, you are an attorney at law licensed to practice in all courts, both State and Federal in Idaho? A. I am.

Q. Are you acquainted with the reasonable attorneys' fees in this court and other courts?

A. I think I am.

Q. State to the Court, Mr. Elder, what is the fact as to whether or not a charge of $50.00 a day for time spent for attending court is in your opinion a reasonable charge for such services?

A. Why, as a usual thing, I should say yes that was reasonable charge, I think it might depend somewhat upon the amount involved and work done.

Q. In a case involving as much money and as many questions as you know arise in the Lane Lumber Co. matter, state whether or not you would consider $50.00 a day a reasonable charge for appearing in that matter.

(Testimony of Robert H. Elder.)

A. I should think that was, as I remember that there was something like several hundred thousand dollars involved.

Q. In considering Mr. Elder that that charge for the time spent in court also included the work done in the office in preparing the case, looking up authorities and going over the matter with the clients, and that no charge was made for that time, that that time was included in the time spent in court, would you consider $50.00 a day reasonable?

A. I would think that very reasonable. [22]

Q. And considering the schedules, Mr. Elder, where it takes two or three weeks to prepare the schedules, the schedules themselves running something like one hundred pages of typewritten matter, and much of which is tabulated matter and descriptive matter, I ask you to state to the Court whether or not you would consider $750.00 a reasonable charge for preparing the schedules.

A. I would think it was.

Witness excused.

[Testimony of R. L. Black.]

R. L. BLACK, a witness being called and duly sworn, on examination testified as follows:

(Examination by Mr. WHITLA.)

Q. Mr. Black, you are an attorney duly licensed to practice in all the courts in this State and the Federal Courts. A. I am.

Q. I will ask you to state, Mr. Black, whether or not you would consider a charge of $50.00 a day for time actually spent in court to be reasonable charge, especially when that included the time spent in the

(Testimony of R. L. Black.)

office in preparing the case and going over the matter with clients.

A. I consider in a case of this kind of this importance, and the amount involved and responsibility, that a charge of $50.00 a day for time actually expended is a very reasonable charge for actual court work.

Witness excused.

[Testimony (Further) of Ezra R. Whitla.]

Mr. WHITLA again takes witness-stand:

Mr. WHITLA.—In regard to the attendance of the court on behalf of bankrupt's attorneys, the referee explicitly [23] asks us to attend all hearings, on account of the important matters involved wished bankrupt and his attorneys to be present at all hearings and that charge we made, we attended by request of referee. And in regard to the advice for which we charged $25.00 in one instance and $15.00 ($15.00) in two other instances, these were matters connected with the Connolly receivership after the bankruptcy proceedings had been instituted and prior to the time schedules were filed or application made to the Court for an order, it was relative to getting possession of the books, so that we could decide certain matters and things, and in connection with that I can't say at this time in detail what they were, but I made the charge at the time services were performed and I considered them reasonable at the time. I will state further that in every instance bankrupt has answered all questions that have been asked, excepting in one instance after he had been

(Testimony of Ezra R. Whitla.)

arrested on fifteen charges preferred by the trustee and some of which were pending, at one examination some questions were asked and we objected to bankrupt answering that until the cases were settled in the State Court, and made the statement in court that as soon as these cases were settled that we would again give them all information relative to the questions asked us. The charges in this matter do not cover any charge made against P. H. Wall for services rendered in the criminal cases.

(Mr. NELSON examines witness.)

Q. Who has paid that, P. H. Wall?

A. He has paid all except the one in Shoshone county.

The COURT.—Q. That is, all charges included in your fee bill, Mr. [24] Whitla, were charges for work done exclusively with reference to these bankruptcy proceedings?

A. Exclusively with reference to these bankruptcy proceedings and also exclusively with reference to getting out the schedules and preparing for and attending the examinations for the purpose of furnishing the Court and creditors information relative to the bankruptcy proceedings.

Q. State whether or not *its* ever been the intention or act of attorneys to prolong this first meeting of creditors.

A. It has not. Bankrupt and his attorneys have been anxious for some time to get the first meeting of creditors closed for two reasons,—first, the officers themselves wanted to be excused from further attendances in court, because they wanted to be allowed

(Testimony of Ezra R. Whitla.)

to attend to their own personal matters and they wanted to be excused to save further expense, and I took that up at one time and asked all persons that desired any further examination of the bankrupts to present any matters they had at an early date so that first meeting could be closed, and I will say further that I took the matter of my attorneys' fees up with Post, Avery & Higgins and Mr. Russell, and they said they had no objection to it and that they considered it reasonable. At the same time I talked the matter over with Mr. Russell, I told him I would like to have matter closed, told him we were making a charge of so much a day and while we could collect so long as it ran I didn't want it prolonged. I have never attempted to prolong it, but, on the other hand, have tried to curtail the expenses for the estate.

[Testimony of R. S. Nelson.]

R. S. NELSON, called as a witness, being [25] duly sworn, on examination testified as follows:

(Examination by Mr. WHITLA.)

Q. Mr. Nelson, you are one of the members of the firm of Whitla & Nelson, are you? A. I am.

Q. You are acquainted with the bill we have filed in the matter of the Lane Lumber Co. bankrupt?

A. Yes, sir.

Q. State what's the fact whether or not,—first state about the time that we were engaged in preparing the schedules in this matter.

A. About three weeks.

Q. What's the fact as to whether or not you consider a charge of $750.00 made to be a reasonable fee?

A. I think it is small enough; it is very reasonable.

(Testimony of R. S. Nelson.)

Q. Now, the charge of $50.00 a day that we have made for the attendance in the bankruptcy court, state whether or not in your opinion that is a reasonable fee for these services.

A. Yes, sir, it is.

Q. And that one member of the firm at least attended court for all the charges we have made?

A. Yes, sir.

Q. This does not include any time spent in looking up authorities in office or going over the case with clients? A. No, sir.

Q. State whether or not that is the regular and ordinary charge of the firm when we perform services by the day, $50.00 a day. [26]

A. Yes, sir.

Q. That is what is paid in other cases when we work by the day? A. Yes, sir.

Q. Now, in matters involved in this case including objections by the bankrupt himself to a large number of claims that was filed on behalf of Lawrence Connolly— A. Yes, sir.

Q. And the bankrupt did object to a large number of claims and successfully sustained that objection?

A. Yes, sir.

Q. And also to a large number of items asked by Connolly as a priority claim in his administration?

A. Yes, sir.

Q. And the bankrupt, acting through the attorneys, at all times assisted the trustee and creditors in getting any information or any information relative to the estate of bankrupt?

A. Yes, we at all times assisted them in every

(Testimony of R. S. Nelson.)

manner we knew how. We were always very willing to assist the trustee and creditors, and to get any information wanted for the benefit of creditors.

Q. State whether or not the attorneys of bankrupt also secured for the trustee after these proceedings were instituted and bankrupt was declared bankrupt deeds to several tracts of land which they had never secured title to prior to that time.

A. Yes, sir.

Q. This included several deeds from P. H. Wall of lands that belonged to him. A. Yes, sir. [27]

Q. And no part of our fee has ever been paid?

A. None of it at all.

Q. And there is at the present time due the reasonable fee $2,755.00 now due the firm of Whitla & Nelson for services performed in that matter?

A. Yes, sir.

Q. State whether or not bankrupt has in every way possible tried to curtail the expenses in this matter. A. Yes, sir, we have.

Q. State whether or not bankrupt has also requested the creditors and trustee to close the first meeting of creditors and the bankrupt's examination at as early a date as possible?

A. Yes, we tried to get it released some time ago and never tried to prolong the matter in any way.

Witness excused.

Mr. WHITLA.—I understand the hearing on our bill is closed?

The COURT.—Yes, for the purpose of taking the proof relative to the attorneys' fees of bankrupt's attorneys is closed.

The COURT.—There being nothing further to come before the court at this time, a further continuance is taken until April 15, 1913, at 10 o'clock A. M.

Filed June 5, 1913. A. L. Richardson, Clerk. [28]

In the District Court of the United States for the District of Idaho, Northern Division.

In the Matter of the LANE LUMBER COMPANY, Bankrupt.

Exhibit "G"—Order [of Referee in Bankruptcy Allowing Certain Attorneys' Fees, etc.].

This matter having come regularly on for hearing on the 9th day of April, A. D. 1913, at 10 A. M. by order of the Court duly made herein upon the objections of L. C. Wilson, Receiver of the State Bank of Commerce, Bank of California, and Price Waterhouse and Post, Avery & Higgins. The petitioners, Whitla & Nelson, appeared in person with their witnesses but the objecting creditors did not appear and were not represented, although the Court finds that they had due notice of said hearing but failed to enter any appearance whatever. The petitioning creditors also appeared by their attorneys, Reed & Boughton, and the Carnegie Trust Company appeared by its attorneys H. M. Stephens and Ernest E. Sargent; thereupon the Court overruled said objections as to their legal questions involved and proceeded to hear the petition of bankrupt for the allowance of the attorneys' fees upon the merits. Thereupon Ezra R. Whitla, R. S. Nelson, R. H. Elder and R. L. Black were duly called, sworn and examined, and the Court,

after having heard said matters and being well and fully advised in the law and premises, finds that the petitioning attorneys performed services for the bankrupt after the petition for bankruptcy had been filed on the 4th day of August, 1911, for which a charge of $25.00 was made, and which said services were reasonable; that on the 7th day of August, 1911, said attorneys also performed services for said bankrupt for which a charge of $15.00 was made, and on the 12th day of August, 1911, the said attorneys rendered further services for which a charge of $15.00 was made, all of which said [29] sums were reasonable. That thereafter said attorneys for bankrupt prepared and filed the schedules, which said schedules covered a typewritten report of more than one hundred pages, and the preparing of which said schedule employed more than two weeks of the time of the firm of Whitla & Nelson, together with the use of their stenographer in preparing said schedules. The Court finds in this regard that by reason of the condition of the affairs of said bankrupt and by reason of the further fact that bankrupt had not had its books since the month of May 1911, that it was very difficult to prepare said schedules of its assets and liabilities as required by the laws, and it was necessary that attorneys be employed to perform said services and that the same were not merely of a clerical nature; that it also became necessary for the attorneys for bankrupt to, and said attorneys for bankrupt did, file a petition in this court to compel Lawrence F. Connolly, as receiver in the state court, to allow the bankrupt and its attorneys to examine bankrupt's books in order that such schedules could

be filed, and such order was duly made herein and the Court finds that the attorneys for bankrupt have made a charge of $750.00 for said preliminary work in preparing said schedules and filing the same as required by law, and that said sum was a reasonable charge.

The Court further finds that the bankrupt's attorneys also filed objections to the allowance of certain claims of L. F. Connolly as receiver on the ground that said claims were not proper claims against said estate, and upon said objections being heard the attorneys for bankrupt urged said objections and also filed a brief in support thereof, and that by reason of said services a large amount of charges made by said receiver amounting to more than $1,000.00 were disallowed, and for which said services bankrupt's attorneys have made a charge of $100.00 which the court finds was and is a reasonable charge. [30]

The Court further finds that said bankrupt's attorneys appeared and took part in the hearings in this case thirty-seven days, and that all of said time was necessarily employed by said attorneys, and that in addition to said time said attorneys also spent a large amount of time and labor in advisory services with said bankrupt, and in preparing authorities upon the various questions involved and the attendance of said bankrupt's attorneys in court in all of said days was under the direction and order of this court. The Court further finds that for these services said attorneys have made a charge of $50.00 per day for the time actually spent in court, and no extra charge has been made for the extra advisory

services and research and preparation made by said attorneys, and the Court finds that said charge was and is a reasonable charge for said services, and that bankrupt's attorneys are entitled thereto, and that said services in all amount to the sum of $2,755.00, which said sum was and is a reasonable charge and allowance to be made to bankrupt's attorneys for the services performed herein.

NOW, THEREFORE, it is hereby ordered that the firm of Whitla & Nelson, a copartnership comprised of Ezra R. Whitla and R. S. Nelson, be and they hereby are allowed the sum of Twenty-seven Hundred and Fifty-five ($2755.00) Dollars as fees for their services as attorneys for the Lane Lumber Company, Bankrupt, and it is further ordered that said charge be paid as costs of administration herein as required by the act of bankruptcy, and that the trustee be and he hereby is authorized, empowered and directed to make payment of said sum whenever he shall have sufficient funds from which said claim can be paid.

Dated this 19 day of May, A. D. 1913.

LAWRENCE L. LEWIS,
Referee in Bankruptcy.

Filed June 5, 1913, A. L. Richardson, Clerk. [31]

In the District Court of the United States for the District of Idaho, Northern Division.

Copy.

#449.

In the Matter of the LANE LUMBER COMPANY, Limited, a Corporation,

Involuntary Bankrupt.

Exhibit "H"—Petition to Review Referee's Order Allowing Whitla & Nelson, Attorneys for Bankrupt, $2755.

To the Honorable LAWRENCE L. LEWIS, Referee in Bankruptcy.

Your petitioners respectfully show:

That the undersigned, L. C. Wilson, is the duly appointed, qualified and acting receiver of the State Bank of Commerce, a corporation, of Wallace, Idaho, a claimant herein; that he is the same L. C. Wilson that filed objections to the above referred to claim of Whitla & Nelson; that the said Bank of Commerce has caused to be filed and allowed in this proceeding its claim against bankrupt;

That Samuel L. Boyd, is the duly elected, qualified and acting trustee of the bankrupt; that he has authorized his attorney, E. N. LaVeine, to file this petition for and on his behalf as trustee of this estate;

That on December 11, 1912, Whitla & Nelson, attorneys for the bankrupt herein, filed their petition praying for the allowance of Two Thousand Seven Hundred Fifty-five ($2755) Dollars, as attorneys for the bankrupt herein; that thereafter objections to the allowance of said claim were filed by your peti-

tioner, L. C. Wilson, and others; that thereafter the hearing was had thereon, after notice to the various attorneys representing creditors in this estate had been given; that thereafter on the 19th day of May, 1913, the referee made and entered an order herein, allowing said firm of Whitla & Nelson the sum of Two Thousand Seven Hundred Fifty-five ($2755) Dollars, as attorney's fees for their services as attorneys for the bankrupt herein, a copy of which [32] is hereto attached, made a part hereof and marked Exhibit "A";

That such order was and is erroneous in that:

1. That the finding of the referee that the bankrupt's attorneys performed services for the bankrupt on August 4th, 1911, for which a charge of Twenty-five ($25) Dollars, was made, and the finding that said services were reasonable, is not founded upon any evidence showing or tending to show that said services were rendered while performing any duties, as attorneys for the officers of the bankrupt, as prescribed by the Bankruptcy Act.

2. That the finding of the referee that the bankrupt's attorneys performed services for the bankrupt, on the 7th day of August, 1911, and the 12th day of August, 1911, for which a charge of Fifteen ($15) Dollars was made on each day, and the finding that the services were reasonable, is not founded upon any evidence showing or tending to show that said services were rendered while performing any duties, as attorneys for the bankrupt, as prescribed by the Bankruptcy Act;

3. That the finding of the referee that the bankrupt's attorneys prepared schedules covering a type-

written report of more than one hundred pages, is contrary to the original thereof, filed herein; that the finding of the referee that the services rendered by the bankrupt's attorneys in preparing said schedule was not merely of a clerical nature, is contrary to the record and to law;

That the amount allowed by the Court, Seven Hundred Fifty ($750) Dollars, is excessive for the preparation of said schedule either by bankrupt or its attorneys;

That the allowance of the said amount of said Seven Hundred Fifty ($750) is for the services of two attorneys and a stenographer for two weeks without any showing, by the attorneys for the bankrupt, as to whether all the said time or only a portion was consumed in the preparation thereof. [33]

4. That the finding of the referee that it became necessary for the bankrupt's attorneys to, and said attorneys did, file a petition in this court to compel Lawerence F. Connolly, as receiver in the State Court to allow the officers of the bankrupt and its attorneys to examine the bankrupt's books in order that such schedule could be filed, misrepresents the true condition with reference to said matter for the records herein disclose that from the 29th day of July, 1911, to the 25th day of September, 1911, said Lawerence F. Connolly was receiver in this Federal Court, in this proceeding, subject to its jurisdiction.

That the records disclose that said Lawerence F. Connolly was discharged as receiver in the said Court, on August 3, 1911, nineteen days before the bankrupt filed its schedule herein.

5. That the objections filed by the attorneys for the bankrupt for the allowance of certain claims of Lawrence F. Connolly, as receiver, was not a legal service required of the attorneys for the bankrupt under the Bankruptcy Act, and the charge for said services is not an obligation chargeable against this estate;

6. That the record in this proceeding shows that the attorneys for the bankrupt did not appear and take part in the hearings in this proceeding thirty-seven days; that on the following dates, for which Fifty ($50) Dollars per day was allowed, no hearing or meeting of creditors was had and no appearance made by said attorneys on behalf of said bankrupt, to wit:

August 26, 1911.....5 days;
October 10, 1911.....1 day;
January 12, 1911 .....1 day;
February 27, 1912 .....1 day.
May 2, 1912 .....1 day;
July 16, 1912 ....1 day:
November 25, 1912 .....1 day;

Total 11 days.

That the meeting on April 16th, 1912, Record p. 878, adjourned immediately after court convened;

That the meeting on April 18, 1912, Record p. 879, continued for a half day only;

That the meeting on August 16, 1912, Record p. 1286, dealt with the allowance of claims; [34]

That the services under date of August 24th, 1912, in bankrupt's attorneys petition, in the sum of One Hundred ($100) Dollars, is not chargeable against

the estate under the Bankruptcy Act;

7. That the said order of the referee in allowing the petition of the attorneys for the bankrupt, in the sum prayed for, to wit, Two Thousand Seven Hundred Fifty-five ($2,755) Dollars, is an excessive and an exorbitant amount for the services rendered taxable under the Bankruptcy Act;

8. That the referee has made and included in said allowance of Two Thousand Seven Hundred Fifty-five ($2,755) Dollars, services alleged to have been rendered, the fees for which are not chargeable against this estate under the Bankruptcy Act;

9. That at the time of said allowance the trustee had no money on hand with which to pay said amount;

10. That at said time Fifteen Thousand Six Hundred Four and 33/100 ($15,604.33) Dollars, incurred by the receiver and passed to the trustee for payment, was due and payable under the orders of this Court;

11. That at the time of making said order allowing said sum of Two Thousand Seven Hundred Fifty-five ($2755) Dollars, there was due and payable to the First National Bank of Harrison, as a secured claim, the sum of Seven Thousand Forty-four and 16/100 ($7,*440*.16) Dollars;

12. That at the time of making said order there was no way of ascertaining the amount the trustee would have on hand to pay the indebtedness of the estate, nor was there any way of ascertaining the amount which he would have to distribute to the creditors.

WHEREFORE, your petitioners, feeling aggrieved because of such order, pray that the same

may be reviewed, as provided in the Bankruptcy Act of 1898, the amendments and General Order XXVII. [35]

L. C. WILSON,

Receiver of the State Bank of Commerce, a Corporation.

JAMES A. WAYNE,

Attorney for L. C. Wilson, Receiver.

E. N. La VEINE,

Attorney for Samuel L. Boyd, Trustee of the Lane Lumber Company, Limited, a Corporation, Bankrupt.

Dated May 28, 1913.

State of Idaho,
County of Kootenai,—ss.

L. C. Wilson, the receiver of the State Bank of Commerce, a corporation, and one of the petitioners mentioned and described in the foregoing petition, does hereby make solemn oath that the statements contained in the foregoing petition are true according to the best of his knowledge, information and belief.

L. C. WILSON,

Receiver of the State Bank of Commerce, a Corporation.

Subscribed and sworn to before me this 28th day of May, 1913.

W. F. McNAUGHTON,

Notary Public. [36]

State of Idaho,
County of Kootenai,—ss.

E. N. LaVeine, being first duly sworn, deposes and

says: That Samuel L. Boyd, trustee herein, is without the State of Idaho, and is not able to make this verification personally; that he has instructed this affiant, as his attorney to sign and file the foregoing petition; the affiant does hereby make solemn oath that the statements contained in the foregoing petition are true according to the best of his knowledge, information and belief.

[Seal] E. N. LA VEINE,

Attorney for Samuel L. Boyd, Trustee of the Land Lumber Company, Limited, a Corporation, Bankrupt.

Subscribed and sworn to before me this 28th day of May, 1913.

W. F. McNAUGHTON,
Notary Public.

Filed June 5, 1913. A. L. Richardson, Clerk. [37]

In the District Court of the United States for the District of Idaho, Northern Division.

IN BANKRUPTCY—No. 449.

In the Matter of the LANE LUMBER COMPANY, Limited, a Corporation,
Involuntary Bankrupt.

Exhibit "I"—Report of Referee in Bankruptcy on an Order Allowing Attorney's Fees of Bankrupt.

To the Honorable FRANK S. DIETRICH, District Judge:

I, LAWRENCE L. LEWIS, Referee in Bankruptcy, in charge of the above-entitled proceedings, do hereby certify:

1.

That in the course of said proceedings on, to wit, the 19th day of May, A. D. 1913, an order was made and filed herein allowing to Whitla & Nelson, attorneys for said bankrupt, attorneys' fees, in the sum of Twenty-seven Hundred and Fifty-five ($2755.00) Dollars.

2.

That thereafter on, to wit, the 28th day of May, 1913, L. C. Wilson, receiver of the State Bank of Commerce (a creditor herein), by and through his attorney, James A. Wayne, and E. N. La Veine, attorney for Samuel L. Boyd, trustee of the above-entitled estate, feeling aggrieved thereat, filed herein their petition for review, which said petition was duly granted.

3.

That a full, true and correct summary of the proceedings upon [38] which said order was made and based is as follows, to wit:

On, to wit, the 11th day of December, 1912, the petition praying for the allowance of attorney's fees to the attorneys of the said bankrupt was duly filed herein; that thereafter on, to wit, the 26th day of March, 1913, said petition came regularly on for hearing (See RECORD OF PROCEEDINGS pages 1467 and 1468, pages 1494 to 1501, both inclusive), pursuant to an order made herein on the 10th day of March, 1913 (See DOCKET, page 57), at which said hearing a continuance was taken on all petitions relating to attorney's fees (except that of the Northern Trust Company et al., RECORD OF PROCEEDINGS, page 1502), until the 9th day of April, 1913,

at ten o'clock A. M. (See RECORD OF PROCEEDINGS, pages 1501, 1524 and 1525); that thereafter on, to wit, the 5th day of April, 1913, L. C. Wilson, receiver of the State Bank of Commerce, the Bank of California, Price Waterhouse & Company, and Post, Avery & Higgins, each and all, filed in said cause their objections to the allowance of said petition; that thereafter on, to wit, the said 9th day of April, 1913, the said petition came regularly on to be heard (See RECORD OF PROCEEDINGS, pages 1526 to 1540, both inclusive); that on the said 9th day of April, 1913, the objections, all and singular, to said petition were overruled and said petitioners directed to proceed with their proof (See RECORD OF PROCEEDINGS, page 1527); and, that thereafter the said petition, the objections thereto, the itemized "fee bill" attached to said petition and the proof submitted having been first carefully considered and the matter taken under advisement, the said order of the 19th day of May, 1913, was duly made and filed in said cause, to which said order L. C. Wilson, the said receiver; and E. N. La Veine attorney for the trustee, herein, submit that such order was and is erroneous in this:

1. "That the findings of the referee that the bankrupt's attorneys performed services for the bankrupt on August 4th, 1911, for which a charge of Twenty-five ($25) Dollars was made and the finding that said services were reasonable, is not founded upon any evidence showing or tending to show that such services were [39] rendered while performing any duties, as attorneys, for the officers of the bankrupt, as prescribed by the Bankruptcy Act."

2. "That the findings of the referee that the bankrupt's attorneys performed services for the bankrupt on the 7th day of August, 1911, and the 12th day of August, 1911, for which a charge of Fifteen ($15) Dollars was made on each day, and the finding that the services were reasonable, is not founded upon any evidence showing or tending to show that said services were rendered while performing any duties, as attorneys for the bankrupt, as prescribed by the Bankruptcy Act."

3. "That the findings of the referee that the bankrupt's attorneys prepared schedules covering a typewritten report of more than one hundred pages, is contrary to the original thereof, filed herewith; that the findings of the referee that the services rendered by the bankrupt's attorneys in preparing said schedule was not merely of a clerical nature, is contrary to the record and to law;

That the amount allowed by the Court, Seven Hundred Fifty ($750) Dollars is excessive for the preparation of said schedule, either by bankrupt or its attorneys;

That the allowance of the said amount of said Seven Hundred Fifty ($750) Dollars is for the services of two attorneys and a stenographer for two weeks without any showing, by the attorneys for the bankrupt, as to whether all the said time or only a portion was consumed in the preparation thereof."

4. "That the finding of the referee that it became necessary for the bankrupt's attorneys to, and said attorneys did, file a petition in this Court to compel Lawrence F. Connolly, as receiver in the State Court

to allow the officers of the bankrupt and its attorneys to examine the bankrupt's books in order that such schedule could be filed, misrepresents the true condition with reference to said matter for the records herein disclose that from the 29th day of July, 1911, to the 25th day of September, 1911, said Lawrence F. Connolly was receiver in this Federal Court, in this proceeding, subject to its jurisdiction;

That the records disclose that said Lawrence F. Connolly was discharged as receiver in the said Court on August 3, 1911, nineteen days before the bankrupt filed its schedule herein."

5. "That the objections filed by the attorneys for the bankrupt for the allowance of certain claims of Lawrence F. Connolly, as receiver, was not a legal service required of the attorneys for the bankrupt under the Bankruptcy Act, and the charge for said services is not an obligation chargeable against this estate."

6. "That the record of this proceeding shows that the attorneys for the bankrupt did not appear and take part in the hearings in this proceeding thirty-seven days; that on the following dates for which Fifty ($50) Dollars per day was allowed, no hearing or meeting of creditors was had and no appearance made by said attorneys on behalf of said bankrupt, to wit:

August 26, 1911.....5 days;
October 10th, 1911.....1 day;
January 12th, 1911.....1 day;
February 27th, 1912.....1 day;

May 2, 1912.....1 day;
July 16th, 1912.....1 day;
November 25th, 1912.....1 day;

Total.....11 days.

[40]

"That the meeting on April 16th, 1912, Record p. 878, adjourned immediately after court convened;

That the meeting on April 18, 1912, Record p. 879, continued for a half day only;

That the meeting on August 16, 1912, Record p. 1286, dealt with the allowance of claims;

That the services under date of August 24th, 1912, in bankrupt's attorneys petition, in the sum of One Hundred ($100) Dollars is not chargeable against the estate under the Bankruptcy Act."

7. "That the said order of the Referee in allowing the petition of the attorneys for the bankrupt, in the sum prayed for, to wit, Two Thousand Seven Hundred Fifty-five ($2755) Dollars is an excessive and an exorbitant amount for the services rendered taxable under the Bankruptcy Act."

8. "That the referee has made and included in said allowance of Two Thousand Seven Hundred Fifty-five ($2755) Dollars, services alleged to have been rendered, the fees for which are not chargeable against this estate under the Bankruptcy Act."

9. "That at the time of said allowance, the trustee had no money on hand with which to pay said amount."

10. "That at said time, Fifteen Thousand Six Hundred Four and 33/100 ($15,604.33) Dollars, in-

curred by the receiver and passed to the trustee for payment, was due and payable under the orders of this Court."

11. "That at the time of making said order allowing said sum of Two Thousand Seven Hundred Fifty-five ($2755) Dollars, there was due and payable to the First National Bank of Harrison, as a secured claim, the sum of Seven Thousand Forty-four and 16/100 ($7,*440*.16) Dollars."

12. "That at the time of making said order there was no way of ascertaining the amount the trustee would have on hand to pay the indebtedness of the estate, nor was there any way of ascertaining the amount which he would have to distribute to the creditors."

THE PRECISE QUESTION SUBMITTED to the Judge for his consideration and decision is this:

1. Is the amount allowed the attorneys for the bankrupt, herein, as attorneys' fees in said proceedings, to wit, the sum of Twenty-seven Hundred Fifty-five ($2755) Dollars, excessive?

I hand up herewith for the information of the Judge, the following records, papers and files, to wit:

1. Petition for Review.

2. Record of Proceedings, pages 1 to 1540, both inclusive.

3. Petition for the allowance of attorneys' fees and fee-bill attached. **[41]**

4. Objections of L. C. Wilson.

5. Objections of Bank of California, Price Waterhouse & Co., and Post, Avery & Higgins.

6. Order Allowing Attorneys' Fees of Bankrupt.

7. Referee's Docket (Certified up in Northern Trust Company, matter).

I HEREBY FURTHER CERTIFY that the above and foregoing are all the papers, records or files herein used or considered or pertaining to this review.

Done at Coeur d'Alene, Idaho, in said District, this 4th day of June, A. D. 1913.

Respectfully submitted,
LAWRENCE L. LEWIS,
Referee in Bankruptcy.

Filed June 5, 1913. A. L. Richardson, Clerk. **[42]**

In the District Court of the United States for the District of Idaho, Northern Division.

In the Matter of the LANE LUMBER COMPANY, Bankrupt.

Exhibit "J"—Decision on Claim of Bankrupt for Attorney's Fees.

Jul. 7, 1913.

WHITLA & NELSON, Attorneys for Claimant.
E. N. LA VEINE, Attorney for Trustee.
JAMES A. WAYNE, Attorney for Objecting Creditor.

DIETRICH, District Judge.

A general creditor and the trustee, feeling aggrieved by an order of the referee allowing in full a claim of the attorneys for the bankrupt for fees aggregating $2,750.00, have brought the matter here

upon a petition for review, in which they both join.

The respondents' objection that the order cannot be reviewed because no exception was taken at the time is not well founded in law. While the course pursued by the trustee and the objecting creditor in not appearing and resisting the claim at the hearing before the referee cannot be commended, it is thought that formal exceptions are not essential to the right of review. The general rule, with its qualifications, is correctly stated in Collier on Bankruptcy (Ninth Edition), page 609, where it is said:

"A referee's findings of fact may be reviewed, although no formal exceptions to his decision are filed where such filing is not required by a rule or order of the court. The court will not ordinarily consider for the first time questions not raised below, or issues not presented by the record; if a point is presented by the record the district court may consider it although it was not discussed before or by the referee. The court **[43]** is not barred by or confined to the matters certified by the referee; under its broad general powers it may consider any point presented by the record."

See, also, *Loveland on Bankruptcy,* Vol. I, Sections 94 and 95.

We pass to a consideration of the merits. The provision of law upon which the claimants rely is found in Section 64-b of the bankruptcy act, where it is declared that costs of administration, including "one reasonable attorney's fee, for the professional services actually rendered * * * to the bankrupt in involuntary cases while performing the

duties'' in the act prescribed, must be paid in preference to certain other of the indebtedness of the estate. The ''duties'' referred to are imposed by Section 7 of the Act, which, in so far as it is thought by the claimants to be material, is as follows:

''Sec. 7. *Duties of Bankrupt.* a. The bankrupt shall (1) attend the first meeting of his creditors, if directed by the court or a judge thereof to do so, and the hearing upon his application for a discharge, if filed; (8) prepare, make oath to, and file in court, within ten days, unless further time is granted, after the adjudication, if an involuntary bankrupt, * * * a schedule of his property showing the amount and kind of property, the location thereof, its money value in detail, and a list of his creditors, showing their residences if known, if unknown that fact to be stated, the amounts due each of them, the consideration thereof, the security held by them, if any, and a claim for such exemptions as he may be entitled to, all in triplicate, one copy of each for the clerk, one for the referee, and one for the trustee; and (9), when present at the first meeting of his creditors, and at such other times as the court shall order, submit to an examination concerning the conduct of his business, the cause of his bankruptcy, his dealings with his creditors and other persons, the amount, kind, and whereabouts of his property, and in addition all matters which may affect the administration and settlement of his estate.''

In considering the several items of the claim it must be borne in mind that while no objection is made because it is in the name as well as upon behalf

of the attorneys, and is not presented directly by the bankrupt itself, there is no contractual relation between claimants and the court or the estate; they were employed not by the trustee but by the bankrupt. For any service rendered to and accepted by the bankrupt it is doubtless liable, but here we [44] are concerned only with the liability of the estate, and its liability is limited to a reasonable compensation for such services, and no others, as fall within the terms of the statute. In re Connell & Sons, 120 Fed. 846. To warrant any allowance therefor it must first appear not only that services were rendered and were valuable; but that the conditions were such that by operation of law an obligation to pay therefor is imposed upon the estate. The inquiry here, therefore, has three branches: Was a service performed? Was such service reasonably necessary to enable the bankrupt to discharge its duties under the law? And what was it reasonably worth? The burden is upon the claimants to make a *prima facie* showing upon each of these three heads.

The first items in the account are as follows:

"1911.

Aug. 4. Advice relating to bankruptcy proceedings instituted against the bankrupt $25.00

Aug. 7. Advice and services relative to bankruptcy proceedings.....$15.00

Aug. 12. Advice and services relative to bankruptcy proceedings .....$15.00."

The adjudication was made upon August 1, 1911,

and to what the advice and service here charged for pertained is by the statement of account left wholly to conjecture. The only evidence pertaining to the items is the testimony of one of the claimants, as follows:

"And in regard to the advice for which we charged $25.00 in one instance, and $15.00 in two other instances, these were matters connected with the Connolly receivership after the bankruptcy proceedings had been instituted and prior to the time schedules were filed or application made to the court for an order. It was relative to getting possession of the books so that we could decide certain matters and things, and in connection with that I can't say at this time in detail what they were, but I made the charge at the time the services were performed, and I considered them reasonable at the time."

But this evidence is altogether too vague and uncertain to serve as the basis for a conclusion that the services were reasonably necessary to enable the bankrupt to perform its duties, or a finding of the value thereof. In the most favorable view the testimony may be construed as suggesting, not showing, that the advice may have [45] related to the preparation of the requisite schedules; but for all services connected with that duty a distinct charge of $750.00 is made, which charge, it is to be inferred from the testimony, was also intended to cover the proceedings to secure possession of the bankrupt's books and papers from the receiver. It is therefore held that the showing was insufficient to warrant the referee in allowing any one of the three items.

We next consider the following charge: "Aug. 24. Preparing proceedings, including objections and brief on objections, and contesting receiver's claim for the allowance of fees and expenses to himself and attorney's fees, $100.00." However commendable the motive which prompted the bankrupt to participate in this contest, its zeal was misdirected. It was certainly under no legal obligation in the premises. It was the trustee's function and his duty, and it was also the right of the creditors, to oppose baseless claims, including any such claim, when put forward by the receiver; the extent of the bankrupt's obligation was to furnish to the trustee such material information as was in its possession. As a matter of fact, the trustee was making opposition to this claim, as were also some of the creditors, and to permit the bankrupt to employ counsel at the expense of the trustee when the trustee was already represented by counsel would be to sanction a wholly unnecessary charge against the estate.

The next is an item of $750.00 for the preparation of the schedules. This being a duty clearly imposed upon the bankrupt, we have but to consider the nature and extent of the legal services necessarily involved therein and the reasonable value thereof. Unquestionably a measure of professional knowledge and skill is required for the proper discharge of such a duty, and perhaps in almost every case some allowance upon this account may properly be made, but I had supposed that rarely, if ever, could the amount exceed $100.00, and commonly a much smaller sum would be adequate. **[46]** In re Meyer,

101 Fed. 695; In re O'Hara, 166 Fed. 384; In re Christenson, 17 Fed. 867; In re Connell & Sons, 120 Fed. 846.

It is, however, contended that the case is an unusual one, and assuming it to be such we shall consider it upon its own merits. It is to be borne in mind that the duty of preparing the schedules is primarily imposed upon the bankrupt. He may secure such clerical and legal assistance as are reasonably necessary, but he cannot at the expense of the estate employ attorneys and shift to them the entire burden and responsibility. The statute provides that the *bankrupt* shall "prepare, make oath to, and file in court" the schedule, setting forth certain facts; and it was contemplated that he should at least furnish the requisite information, and that the assistance provided for him at the expense of the estate would extend only to the matter of putting the information into the prescribed legal form.

It is not thought to be necessary to attempt a fine distinction between the duties which are strictly professional and those which are merely clerical, in the preparation of a schedule, but in estimating the compensation which should be allowed respect must be had to the nature of the work, for the compensation should be measured with regard to the character and quality of the service rather than the calling or profession of him by whom the service is rendered. Now, it is not to be questioned that ordinarily the work of preparing a schedule is in the main that of an intelligent accountant. In re Goldville Mfg. Co., 123 Fed. 579, 586. With a few simple instructions

touching the required contents of the schedule, the various headings under which assets and liabilities should be classified, and the formalities of execution, no competent accountant should experience serious difficulty in substantially complying with the law. In so far as we are advised by the record, the present case is no marked exception to the general rule in so far as necessary legal services are concerned; and indeed it is difficult to see how any difficult or intricate questions could be involved in any such case. It is not for [47] the bankrupt carefully to consider whether his title to property claimed by him is vulnerable or invulnerable, or with nicety to determine the exact status of debts which it is claimed he owes. The officers of the Court, as well as parties in interest, are chiefly concerned in being advised of the facts to such an extent that they may make intelligent investigation. The schedule adjudicates nothing, and is binding upon no one; at most it may in certain contingencies be regarded as *prima facie* evidence of the facts therein stated. It must therefore be held, I think, that in the main the services here rendered were such as a competent clerk or accountant might have performed, and compensation must be awarded upon that basis. I cannot attach much importance to the fact that the books and papers were in the hands of a receiver at the time the order was made requiring the bankrupt to file schedules, for I am unable to see how or why any considerable amount of service could have been required to get possession of the books. The receiver was an officer of this court, and if he was, either in good faith

or bad, withholding the books from the inspection of the bankrupt, I must assume that upon the most informal application to the referee an order would have been made requiring him, under proper conditions, to give access to the books.

Unfortunately there is wanting definite information touching one, if not the most important, factor entering into the consideration of the amount to be allowed upon this account, and that is the time which was actually and necessarily spent. If there were any assurance of more specific data upon the subject I would be inclined to refer the matter back for further testimony, but apparently no account was kept, and nothing better than the general estimate of the claimants, testifying from memory, is available. The schedule covers approximately one hundred pages of typewritten matter, and there is some testimony relating to what would be a reasonable charge for the services of a stenographer in doing the clerical work, but this estimate rests [48] upon the unwarranted assumption that the work was done by what is ordinarily called a public stenographer, whose charges, it is well known, greatly exceed the prevailing compensation of salaried office stenographers. There is no evidence that the work was done in that way, and it is to be presumed that it was performed by the claimants' regularly employed stenographer. Assuming a reasonable compensation for a competent office stenographer to be $100.00 per month, an allowance of $35.00 would cover a period of practically ten days, and I am satisfied that that amount of time is quite ample

in which to do all the work preliminarily and finally required of a stenographer and typist in the preparation of the schedule. For the labor of gathering together and classifying the data I shall allow compensation as for the services of an accountant, at the rate of $15.00 per day for ten days; and as a retainer, and for legal advice incidental to the supervision of the work, $100.00, making a total for the preparation of the schedule of $285.00. This amount may be somewhat larger than should have been authorized if the extent of the required service and the compensation to be allowed therefor, had been prescribed in advance, but in view of all the circumstances, and taking into consideration the benefit to the estate of the service rendered, it is thought that the conclusion reached is not unreasonable and does substantial justice. It should be added that, in considering the compensation to be allowed for this service, as well as for other services to the bankrupt covered by the claim, I am not able to concur in the view apparently entertained by the claimants, that there is any very material or direct relation between the mere aggregate of the assets and liabilities of a bankrupt estate, as shown by the schedules, and the compensation to be allowed to the bankrupt's attorneys. The value of the matter involved is generally taken into consideration as an important factor in determining what is a reasonable charge for legal advice or professional service, but so far as concerns service rendered to the bankrupt neither the assets nor the liabilities of the estate represent or [49] measure the value of the matter involved. Certain

interests of the bankrupt and certain duties imposed upon him by the law, constitute the subject matter of the service. The degree of solvency of the estate may possibly be considered to the same extent as is the ability of a client to pay a reasonable fee, but here as yet it is wholly uncertain what dividend, if any, will be realized by the unsecured creditors; apparently, however, not a large one. The schedule itself is no criterion. Here for illustration the schedule discloses assets valued at $771,201.50, and liabilities aggregating $532,940.00, but within a few months after the filing of the schedule, upon an appraisement in the manner prescribed by law, the official appraisers reported the entire value of the assets as being only $217,996.63.

There remains for consideration the claim of $1,850.00 for "attendance in bankruptcy court" at irregular intervals during the period from August, 1911, to November, 1912, thirty-seven different days, at the rate of $50.00 per day. The magnitude of the item, if not startling, at least challenges our attention, and gives sharp emphasis to the inquiry whether it is contemplated by the bankruptcy act that estates shall be burdened with the expense of furnishing a legal attendant for the bankrupt while he is present pursuant to an order of the court at the first meeting of creditors, and sessions of the court, either to give information or to submit to examination under oath. While contingencies doubtless may arise where the assistance of counsel may be reasonably required, it is thought that there is no presumption

of such need, and that ordinarily attorney's fees for such services are not chargeable against the estate. It is urged that in certain reported decisions (*In re Michel,* 95 Fed. 803; *In re Kross,* 96 Fed. 816; *In re Mayer,* 101 Fed. 695, and *In re Anderson,* 103 Fed. 855, being cited), the contrary view has been held, but upon analysis it will be found that no one of these cases lends strong support to the [50] proposition that under all circumstances compensation for such a service is a matter of right. In the Michel case, which was presented *ex parte,* no such charge was involved. In the Kross case, Judge Brown, in rendering the decision, expressly states that: "Ordinarily I cannot regard attendance by counsel for the bankrupt at all the various examinations as necessary. The restraints on discharge being confined to acts either criminal or most plainly fraudulent and wrong, the honest and straightforward debtor has rarely need of 'counsel' unless falsely attacked, when professional aid may become proper and necessary, and should then be compensated. There is often, however, too much interference and objection by the bankrupt's attorney in the ordinary examinations in behalf of creditors, which operates in every way injuriously." In the Mayer case the question was not in issue, and was discussed only *in arguendo.* While in the Anderson case it is not very clear just how the question arose, the conclusion of the Court seems to have been that a bankrupt should be allowed such services of counsel "to the extent of protecting his rights on the inquiries" made of him. It may be that it is not unusual for a

small allowance to be made upon this account, but I have no present recollection that such a charge has ever before been called to my attention, and in the great majority of cases I can see no reason why the bankrupt should have the assistance of counsel in the performance of the simple duty required, or the burden of fees therefor imposed upon the estate. Quite obviously the purpose of requiring the attendance of the bankrupt is that he may give information, either voluntarily or under oath, touching any matter which may affect the administration and the settlement of the estate. He has no obligation except to disclose facts within his knowledge. He attends primarily as a witness, and there is ordinarily no more reason why he, as a witness, should have the protecting care of attendant counsel than that any other witness under any other circumstances should have such protection. It is not perceived why, as is somewhere suggested, **[51]** the bankrupt needs to be guarded against unwittingly or inadvertently doing or saying something which might be prejudicial to his right to a discharge in bankruptcy; if he is willing frankly to disclose the facts he can, as a rule, suffer no prejudice. But here even that consideration is of little moment, for no one can be greatly concerned in the question whether or not a corporation shall be discharged, or in opposing such discharge. Nor could there here arise any question touching the matter of exemptions, for a corporation is not entitled to exemptions. Ordinarily, why should not the bankrupt put himself at the service of the trustee, who is presumably not antagonistic, and

who should not, and presumably does not, have any motive or incentive to injure him or prejudice him in any of his rights? Instead of laying the facts before counsel especially employed by him, why should he not disclose them directly to the trustee or the attorney for the trustee? If it were shown that the trustee and his attorney were disposed unjustly to attack him or to treat him unfairly, possibly he should have the assistance of counsel, but ordinarily it may be assumed that if any such disposition were shown the referee or judge would check it and see that his rights were protected while acting as a witness or informant, as the court will protect a witness against wrong or abuse in any other case or proceeding in which he appears in obedience to process. It is doubtless true that the claimants here spent at least a large part of the time in attending the bankruptcy proceedings for which they claim compensation, and lest injustice be done to them I have taken the trouble to go through the voluminous stenographic report of the proceedings had before the referee, but in the main it is not apparent how their attendance was either of benefit to the estate or was needed by the bankrupt. At one time criminal prosecutions were instituted against the officers of the bankrupt in attendance, and it may be that an allowance can with propriety be made for counsel in connection with that feature of the proceedings; [52] but surely it was unnecessary to have counsel in attendance all the time in anticipation of such a need. The same contingency might arise any time in the course of the examination of a witness in court, and

in a proper case the court would doubtless give the witness an opportunity to procure counsel.

It is, however, urged by claimants that their presence was in compliance with the express order and direction of the referee. It is true that in the order made by the referee (but apparently draughted by claimants) allowing the claim there is a recital to the effect that the attendance "was under the direction and order" of the referee, but I do not find that the record justifies such a finding. One of the claimants testified that the referee asked them to attend all the hearings, but if it were to be assumed that the referee has authority to require counsel for the bankrupt to be present, surely such direction, to be efficacious, should be made of record, and oral testimony thereof must be rejected as being incompetent. Upon examining what is furnished to me as the referee's docket, containing a large number of orders pertaining to the proceeding, I find no order or direction requiring counsel to be present. There is in the order of August 22, 1911, appointing the time for the first meeting of creditors, September 7, 1911, a requirement that the bankrupt and certain of its officers therein named be present at the first meeting of creditors, and also a direction that notice of the order be sent to the bankrupt and its officers and its attorneys of record, the claimants here. Upon the same day, that is, on August 22, 1911, a specific order was formulated and entered requiring the bankrupt and its officers to appear on September 7th, and this is expressly directed to the bankrupt and to P. H. Wall, its President, and N. K. Wall and B. F.

O'Neil, its Secretary and Treasurer respectively; it makes no mention of the bankrupt's counsel. I find no other order bearing upon the subject. [53]

With the one exception noted I am unable to find from the whole record, that there was any reasonable need for the attendance of the claimants at the meetings of creditors or the sessions of the court, as counsel for the bankrupt, and considering all services under this head, which were of benefit to the estate or which fall within the rule hereinbefore stated, it is thought that $100.00 is all that can properly be allowed upon this account. In that view it becomes unnecessary specifically to find upon the issue whether the attendance covered thirty-seven days, as contended for by the claimants, or only thirty days, as asserted by the trustee. Nor need we determine what would be a reasonable per diem allowance for such attendance, taking into consideration the actual amount of time spent upon each of the several days and the character and scope of the business then under consideration. It is doubtless true, and it is much to be regretted, that the amount allowed is in any view inadequate reasonably to compensate for the time claimants have actually spent upon this account, but, as was said by Judge Phillips in In re Harrison Mercantile Company (95 Fed. 123), "while the Court personally would be pleased to exercise a spirit of large liberality both towards attorneys and its officers assisting in the administration of bankrupt estates, it must be understood that the court is impressed with a sense of the obligations imposed upon it by the bankrupt act, to so administer it as to

preserve both the letter and the spirit of the statute and produce the best results in behalf of creditors." That economy of administration is enjoined by the spirit of the Act cannot be gainsaid. *In re Curtis,* 100 Fed. 792.

The order appealed from will therefore be reversed with directions to allow claimants $385.00, the same to be paid in due course of administration, if there are sufficient funds available therefor; otherwise the claim is to share ratably with others of like dignity.

Filed July 7, 1913. A. L. Richardson, Clerk. [54]

[Statement of Meetings.]

"A–O."

MEETINGS.

1911.

Sept. 7,	10: A. M.	P. 1
	1:30 P. M.	P. 4
Sept. 8,	9:30 A. M.	P. 36
	1:30 P. M.	P. 57
Sept. 9,	9:30 A. M.	P. 106
	1:30 P. M.	P. 140
Sept. 27,	1: A. M.	P. 178
Oct. 23,	10: A. M.	P. 182
Nov. 13,	10: A. M.	P. 186
Dec. 4,	10: A. M.	P. 190
	2: P. M.	P. 194
Dec. 5,	10: A. M.	P. 236
Dec. 5,	(Continued from Book 1)	P. 238
Dec. 5,	1:30 P. M.	P. 270

Sale of Railroad, and Sale of Remaining Assets except timber.

Nov. 12, 10:00 A. M..... .....P. 1464

Confirmation of Sale of Remaining Assets except timber.

Filed Sept. 19, 1913. A. L. Richardson, Clerk. [57]

[Letter Dated August 5, 1913, from R. S. Nelson to Clerk U. S. District Court.]

WHITLA & NELSON,
Attorneys at Law,
Coeur d'Alene, Idaho.

August 5, 1913.

Mr. A. L. Richardson,
Clerk of the U. S. District Court,
Boise, Idaho.

Dear Sir:—

Please find enclosed the praecipe for transcript in the Lane Lumber Company Bankruptcy matter. The transcript is to be used in the review of the decision of the District Court in reducing the claim of Whitla & Nelson, attorneys for Bankrupt. We desire to take this to the Circuit Court of Appeals. The Transcript is to include the following:

1. The Petition of Whitla & Nelson for allowance of attorney's fees, marked Exhibit "A."

2. The objection of the Bank of California and Price, Waterhouse & Company, marked Exhibit "B."

3. The objection of L. C. Wilson, receiver of the

State Bank of Commerce of Wallace, marked Exhibit "C."

4. The objection of Samuel Boyd, Trustee, marked "D." (Not on file.)

5. Order of referee setting said petition and objection down for hearing, marked Exhibit "E."

6. The testimony taken at said hearing before the referee, marked Exhibit "F."

7. Order for findings, allowing said attorney's fees, marked Exhibit "G."

8. Petition to review the referee's order allowing Whitla & Nelson, attorneys for bankrupt, $2755.00, marked Exhibit "A."

9. Report of referees in bankruptcy, and an order allowing attorney's fees, marked Exhibit "I."

10. Decision of the Honorable District Judge on claim of bankrupts for attorney's fees, marked Exhibit "J."

11. Copy of referee's appearance docket showing dates of hearing, marked Exhibit "A–O."

Yours very truly,

R. S. NELSON.

Enc.

RSN/T.

Filed Sept. 8, 1913. A. L. Richardson, Clerk.

[58]

[Certificate of Clerk U. S. District Court to Transcript of Record.]

In the District Court of the United States, District of Idaho, Northern Division.

In the Matter of the LANE LUMBER COMPANY, Bankrupt.

United States of America,
District of Idaho,—ss.

I, A. L. Richardson, Clerk of the District Court of the United States for the District of Idaho, do hereby certify that the foregoing copies of Petition of Whitla & Nelson for allowance of attorneys' fees, objection of the bank of California and Price, objection of L. C. Wilson, order of referee setting said petition and objection down for hearing, the testimony taken at said hearing before the referee, order for findings, petition to review the referee's order, report of referee, decision of District Court, copy of referee's appearance docket and Clerk's certificate, have been by me compared with the originals and that it is a correct transcript therefrom and of the whole of such originals as the same appears of record and on file at my office and in my custody.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court in said district this 20th day of Sept. 1913.

[Seal] A. L. RICHARDSON,
Clerk. **[59]**

[Endorsed]: No. 2336. United States Circuit Court of Appeals for the Ninth Circuit. Whitla & Nelson, a Copartnership, Attorneys for the Lane Lumber Company, a Corporation, Bankrupt, Petitioner, vs. Samuel Boyd, Trustee in Bankruptcy of the Lane Lumber Company, a Corporation, Bankrupt, and L. C. Wilson, Receiver of the State Bank of Commerce of Wallace, Idaho, Respondents. In the Matter of the Lane Lumber Company, a Corporation, Bankrupt. Petition for Revision and Transcript of Record in Support Thereof, Under Section 24b of the Bankruptcy Act of Congress, Approved July 1, 1898, to Revise, in Matter of Law, a Certain Order of the United States District Court for the District of Idaho, Northern Division.

Filed October 31, 1913.

FRANK D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.